



**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 1995 ASSEMBLY BILL 146**

June 28, 1995 – Offered by Representative KRUG.

1 **AN ACT** *to renumber* 940.06; *to amend* 343.31 (3) (c), 346.65 (6) (a) 1., 346.65
2 (6) (a) 2., 346.65 (6) (d), 939.22 (21) (d), 939.24 (1), 939.25 (1), 939.32 (1) (intro.),
3 940.09 (1d), 940.09 (1m), 940.09 (2), 940.25 (1d), 940.25 (1m), 940.25 (2) and
4 941.38 (1) (b) 4.; and *to create* 939.75, 940.06 (2), 940.09 (1) (c) to (e), 940.09
5 (1g) (c) and (d), 940.195 and 940.25 (1) (c) to (e) of the statutes; **relating to:**
6 causing harm or death to an unborn child and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 343.31 (3) (c) of the statutes is amended to read:
8 343.31 (3) (c) Any person convicted under s. 940.09 of causing the death of
9 another or an unborn child by the operation or handling of a motor vehicle shall have
10 his or her operating privilege revoked for 5 years.

11 **SECTION 2.** 346.65 (6) (a) 1. of the statutes is amended to read:
12 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a
13 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
14 seized, shall order a law enforcement officer to equip the motor vehicle with an

1 ignition interlock device or immobilize any motor vehicle owned by the person whose
2 operating privilege is revoked under s. 343.305 (10) or who committed a violation of
3 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a)
4 ~~or~~, (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305
5 (10) or who is convicted of the violation has 2 prior suspensions, revocations or
6 convictions within a 10-year period that would be counted under s. 343.307 (1). The
7 court shall not order a motor vehicle equipped with an ignition interlock device or
8 immobilized if that would result in undue hardship or extreme inconvenience or
9 would endanger the health and safety of a person.

10 **SECTION 3.** 346.65 (6) (a) 2. of the statutes is amended to read:

11 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor
12 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)
13 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a)
14 ~~or~~, (b), (c) or (d) or 940.25 (1) (a) ~~or~~, (b), (c) or (d) if the person whose operating privilege
15 is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior
16 suspensions, revocations or convictions within a 10-year period that would be
17 counted under s. 343.307 (1).

18 **SECTION 4.** 346.65 (6) (d) of the statutes is amended to read:

19 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
20 proving to a reasonable certainty by the greater weight of the credible evidence that
21 the motor vehicle is a motor vehicle owned by a person who committed a violation of
22 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a)
23 ~~or~~, (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior
24 convictions, suspensions or revocations within a 10-year period as counted under s.
25 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,

1 suspensions or revocations within a 10-year period as counted under s. 343.307 (1).
2 If the owner of the motor vehicle proves by a preponderance of the evidence that he
3 or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09
4 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a) ~~or~~, (b), (c) or (d), or, if the seizure is under par.
5 (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations
6 within a 10-year period as counted under s. 343.307 (1) or, if the seizure is under par.
7 (a) 2., 3 or more prior convictions, suspensions or revocations within a 10-year period
8 as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon
9 the payment of storage costs.

10 **SECTION 5.** 939.22 (21) (d) of the statutes is amended to read:

11 939.22 (21) (d) Battery, substantial battery or aggravated battery, as
12 prohibited in s. 940.19 or 940.195.

13 **SECTION 6.** 939.24 (1) of the statutes is amended to read:

14 939.24 (1) In this section, “criminal recklessness” means that the actor creates
15 an unreasonable and substantial risk of death or great bodily harm to another
16 human being and the actor is aware of that risk, except that for purposes of s. 940.06
17 (2), “criminal recklessness” means that the actor creates an unreasonable and
18 substantial risk of death or great bodily harm to an unborn child, the actor is aware
19 of that risk and the actor knew or should have known that the woman was pregnant.

20 **SECTION 7.** 939.25 (1) of the statutes is amended to read:

21 939.25 (1) In this section, “criminal negligence” means ordinary negligence to
22 a high degree, consisting of conduct ~~which~~ that the actor should realize creates a
23 substantial and unreasonable risk of death or great bodily harm to another, except
24 that for purposes of ss. 940.06 (2) and 940.195, “criminal negligence” means ordinary
25 negligence to a high degree, consisting of conduct that the actor should realize

1 creates a substantial and unreasonable risk of death or great bodily harm to an
2 unborn child.

3 **SECTION 8.** 939.32 (1) (intro.) of the statutes is amended to read:

4 939.32 (1) (intro.) Whoever attempts to commit a felony or a battery as defined
5 by crime specified in s. 940.19 or theft as defined by s., 940.195 or 943.20 may be fined
6 or imprisoned or both not to exceed one-half the maximum penalty for the completed
7 crime; except:

8 **SECTION 9.** 939.75 of the statutes is created to read:

9 **939.75 Death or harm to an unborn child. (1)** In this section and ss. 939.24
10 (1), 939.25 (1), 940.06 (2), 940.09 (1) (c) to (e) and (1g) (c) and (d), 940.195 and 940.25
11 (1) (c) to (e), “unborn child” means any individual of the human species from
12 fertilization until birth that is gestating inside a woman.

13 **(2)** (a) In this subsection, “induced abortion” means the use of any instrument,
14 medicine, drug or other substance or device in a medical procedure with the intent
15 to terminate the pregnancy of a woman and with an intent other than to increase the
16 probability of a live birth, to preserve the life or health of the infant after live birth
17 or to remove a dead fetus.

18 (b) Sections 940.06 (2), 940.09 (1) (c) to (e) and (1g) (c) and (d), 940.195 and
19 940.25 (1) (c) to (e) do not apply to any of the following:

20 1. An act that causes the death of an unborn child if the act was committed
21 during any induced abortion, whether lawful or unlawful.

22 2. An act that is committed in accordance with the usual and customary
23 standards of medical practice during diagnostic testing or therapeutic treatment
24 performed by, or under the supervision of, a physician licensed under ch. 448.

1 2h. An act by any health care provider, as defined in s. 155.01 (7), that is in
2 accordance with a pregnant woman's power of attorney for health care instrument
3 under ch. 155 or in accordance with a decision of a health care agent who is acting
4 under a pregnant woman's power of attorney for health care instrument under ch.
5 155.

6 3. An act by a woman who is pregnant with an unborn child that results in the
7 death of or great bodily harm or bodily harm to that unborn child.

8 4. The prescription, dispensation or administration by any person lawfully
9 authorized to do so and the use by a woman of any medicine, drug or device that is
10 used as a method of birth control or is intended to prevent pregnancy.

11 **(3)** When the existence of an exception under sub. (2) has been placed in issue
12 by the trial evidence, the state must prove beyond a reasonable doubt that the facts
13 constituting the exception do not exist in order to sustain a finding of guilt under s.
14 940.06 (2), 940.09 (1) (c) to (e) or (1g) (c) or (d), 940.195 or 940.25 (1) (c) to (e).

15 **SECTION 10.** 940.06 of the statutes is renumbered 940.06 (1).

16 **SECTION 11.** 940.06 (2) of the statutes is created to read:

17 940.06 **(2)** Whoever intentionally, recklessly or negligently causes the death of
18 an unborn child is guilty of a Class C felony.

19 **SECTION 12.** 940.09 (1) (c) to (e) of the statutes are created to read:

20 940.09 **(1)** (c) Causes the death of an unborn child by the operation or handling
21 of a vehicle while under the influence of an intoxicant.

22 (d) Causes the death of an unborn child by the operation or handling of a vehicle
23 while the person has a prohibited alcohol concentration, as defined in s. 340.01
24 (46m).

1 (e) Causes the death of an unborn child by the operation of a commercial motor
2 vehicle while the person has an alcohol concentration of 0.04 or more but less than
3 0.1.

4 **SECTION 13.** 940.09 (1d) of the statutes is amended to read:

5 940.09 (1d) If the person who committed an offense under sub. (1) (a) ~~or~~, (b), (c)
6 or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year period,
7 as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
8 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
9 the person who committed the offense or the equipping of a motor vehicle owned by
10 the person with an ignition interlock device.

11 **SECTION 14.** 940.09 (1g) (c) and (d) of the statutes are created to read:

12 940.09 (1g) (c) Causes the death of an unborn child by the operation or handling
13 of a firearm or airgun while under the influence of an intoxicant.

14 (d) Causes the death of an unborn child by the operation or handling of a
15 firearm or airgun while the person has a blood alcohol concentration of 0.1% or more
16 by weight of alcohol in that person's blood or 0.10 grams or more of alcohol in 210
17 liters of that person's breath.

18 **SECTION 15.** 940.09 (1m) of the statutes is amended to read:

19 940.09 (1m) A person may be charged with and a prosecutor may proceed upon
20 an information based upon a violation of sub. (1) (a) or (b) or both ~~or~~ or, sub. (1) (a)
21 or (bm) or both or, sub. (1) (c) or (d) or both, sub. (1) (c) or (e) or both, sub. (1g) (a)
22 or (b) or both or sub. (1g) (c) or (d) or both for acts arising out of the same incident or
23 occurrence. If the person is charged with violating both sub. (1) (a) and (b) ~~or~~, both
24 sub. (1) (a) and (bm) ~~or~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g)
25 (a) and (b) or both sub. (1g) (c) and (d) in the information, the crimes shall be joined

1 under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both
2 sub. (1) (a) and (bm) ~~or of~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub.
3 (1g) (a) and (b) or both sub. (1g) (c) and (d) for acts arising out of the same incident
4 or occurrence, there shall be a single conviction for purposes of sentencing and for
5 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
6 (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1)
7 (a), (b) ~~and~~, (bm), (c), (d) and (e), and sub. (1g) (a) ~~and~~, (b), (c) and (d), each require
8 proof of a fact for conviction which the other does not require.

9 **SECTION 16.** 940.09 (2) of the statutes is amended to read:

10 940.09 (2) The defendant has a defense if he or she proves by a preponderance
11 of the evidence that the death would have occurred even if he or she had been
12 exercising due care and he or she had not been under the influence of an intoxicant
13 or did not have a blood alcohol concentration described under sub. (1) (b) ~~or~~, (bm), (d)
14 or (e) or (1g) (b) or (d).

15 **SECTION 17.** 940.195 of the statutes is created to read:

16 **940.195 Battery to an unborn child.** Whoever intentionally or negligently
17 causes bodily harm to an unborn child by conduct that creates a substantial risk of
18 great bodily harm is guilty of a Class D felony.

19 **SECTION 18.** 940.25 (1) (c) to (e) of the statutes are created to read:

20 940.25 (1) (c) Causes great bodily harm to an unborn child by the operation of
21 a vehicle while under the influence of an intoxicant.

22 (d) Causes great bodily harm to an unborn child by the operation of a vehicle
23 while the person has a prohibited alcohol concentration, as defined in s. 340.01
24 (46m).

1 (e) Causes great bodily harm to an unborn child by the operation of a
2 commercial motor vehicle while the person has an alcohol concentration of 0.04 or
3 more but less than 0.1.

4 **SECTION 19.** 940.25 (1d) of the statutes is amended to read:

5 940.25 (1d) If the person who committed the offense under sub. (1) (a) ~~or~~, (b),
6 (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year
7 period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be
8 followed regarding the immobilization or seizure and forfeiture of a motor vehicle
9 owned by the person who committed the offense or the equipping of a motor vehicle
10 owned by the person with an ignition interlock device.

11 **SECTION 20.** 940.25 (1m) of the statutes is amended to read:

12 940.25 (1m) A person may be charged with and a prosecutor may proceed upon
13 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)
14 or (bm) or both, sub. (1) (c) or (d) or both or sub. (1) (c) or (e) or both for acts arising
15 out of the same incident or occurrence. If the person is charged with violating both
16 sub. (1) (a) and (b) ~~or~~, both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub.
17 (1) (c) and (e) in the information, the crimes shall be joined under s. 971.12. If the
18 person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both sub. (1) (a) and (bm), both
19 sub. (1) (c) and (d) or both sub. (1) (c) and (e) for acts arising out of the same incident
20 or occurrence, there shall be a single conviction for purposes of sentencing and for
21 purposes of counting convictions under s. 23.33 (13) (b) 2 and 3, under s. 30.80 (6) (a)
22 2 or 3, under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2 and 3. Subsection
23 (1) (a), (b) ~~and~~, (bm), (c), (d) and (e) each require proof of a fact for conviction which
24 the other does not require.

25 **SECTION 21.** 940.25 (2) of the statutes is amended to read:

1 940.25 (2) The defendant has a defense if he or she proves by a preponderance
2 of the evidence that the great bodily harm would have occurred even if he or she had
3 been exercising due care and he or she had not been under the influence of an
4 intoxicant or did not have a blood alcohol concentration described under sub. (1) (b)
5 or, (b), (d) or (e).

6 **SECTION 22.** 941.38 (1) (b) 4. of the statutes is amended to read:

7 941.38 (1) (b) 4. Battery, substantial battery or aggravated battery, as
8 prohibited in s. 940.19 or 940.195.

9 **SECTION 23. Initial applicability.**

10 (1) This act first applies to offenses occurring on the effective date of this
11 subsection.

12

(END)